

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JULIE DERMANSKY,
Plaintiff,

- against -

GIZMODO MEDIA GROUP, LLC,
Defendant.

Docket No. 17-cv-03985

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Julie Dermansky (“Dermansky” or “Plaintiff”), by and through her undersigned counsel, as and for her Complaint against Defendant Gizmodo Media Group, LLC (“Gizmodo” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Trump supporters, owned and registered by Dermansky, a Louisiana-based photojournalist. Accordingly, Dermansky seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Dermansky is a professional photojournalist in the business of licensing her photographs to online, print, and television media outlets for a fee, having a usual place of business at 2357 Cours Carson Street, Mandeville, Louisiana 70448. Dermansky's photographs have appeared in many publications around the United States.

6. Upon information and belief, Gizmodo is a limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 2 West 17th Street, Floor 2, New York, New York 10011. Upon information and belief, Gizmodo is registered with the State of New York, Department of Corporations to do business in the State of New York. At all times material hereto, Gizmodo has owned and operated a website at the URL: www.gizmodo.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. In 2015, Dermansky photographed Trump supporters (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Dermansky is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the U.S. Copyright Office and was given Copyright Registration Number VA 2-000-285.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about June 8, 2016, Gizmodo ran an article on the Website entitled *7 More Viral Photos That Are Totally Fake*. See <http://gizmodo.com/7->

more-viral-photos-that-are-totally-fake-1764101952. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Gizmodo did not license the Photograph from Plaintiff for its article, nor did Gizmodo have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST GIZMODO)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Gizmodo infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Gizmodo is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the aforementioned acts of infringement by Gizmodo have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

16. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover her damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to recover her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

19. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Gizmodo be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her costs, expenses and attorney's fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
May 25, 2017

LIEBOWITZ LAW FIRM, PLLC

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